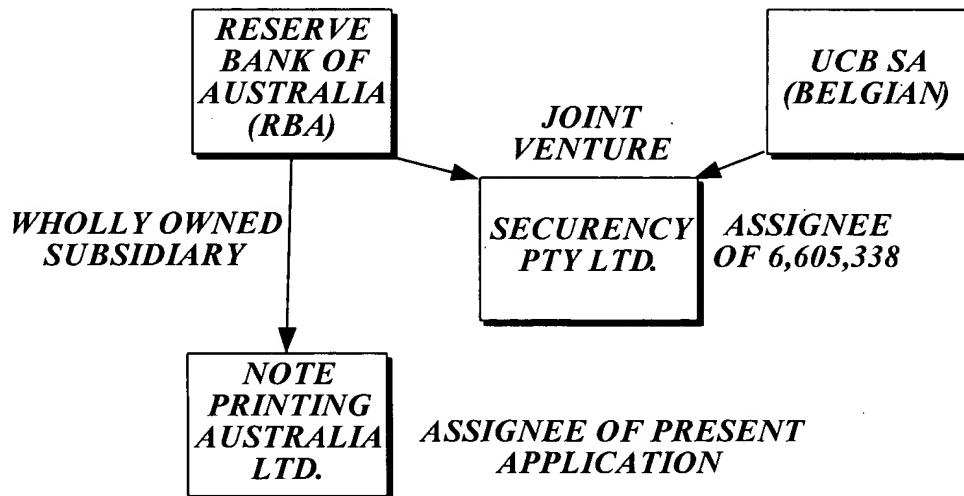


### REMARKS

Applicant respectfully requests that the above-identified application be re-examined.

The April 28, 2004, Office Action ("Office Action") rejected all of the claims previously in this application under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-40 of U.S. Patent No. 6,605,338 (Romanic et al.). Applicant respectfully submits that this rejection is improper because there was no common ownership at the time the claimed inventions were made. Nor were the inventions subject to an obligation of assignment that would establish common ownership at the time the inventions were made. In this regard, as noted in the response to the final Office Action dated November 13, 2003, filed in this application prior to the filing of a request for continued examination (RCE), U.S. Patent No. 6,605,338 is assigned to Securency Pty Ltd. Securency Pty Ltd. is a joint venture between the Reserve Bank of Australia ("RBA") and UCB SA, a Belgian company, which manufactures polymer substrates for use in the manufacture of bank notes. The present application is assigned to Note Printing Australia Ltd. Note Printing Australia Ltd. is a wholly owned subsidiary of RBA. Thus, while there is a relationship between the assignees of this application and U.S. Patent No. 6,605,338, the owning companies are different legal entities. Diagrammatically, the relationship is as follows:



Because of the different owning entities, applicant submits that a timely-filed terminal disclaimer is an inappropriate response to the double patenting rejection. In this regard, the Examiner's attention is directed to the attached copy of M.P.E.P. pages 700-52 through

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Suite 2800  
Seattle, Washington 98101  
206.682.8100

700-55 (Attachment A), which discusses common ownership and when a terminal disclaimer is appropriate and inappropriate. The closest example to the present ownership situation is Example 2 on page 700-53. That example is a situation where a parent company (in this case, RBA) owns 100 percent of subsidiary A (in this case, Note Printing Ltd.) and a lesser percentage of subsidiary B (in this case, Securrency Pty Ltd.). Example 2 clearly states inventions of A and B are not commonly owned by the parent company. In response to the Examiner's request for inventor identification, the inventors are identified in this application (J. Nemeth) and in U.S. Patent No. 6,605,335 (Romanic et al.).

Notwithstanding the above, applicant submits that the invention claimed in the amended claims of this application is patentably distinct from U.S. Patent No. 6,605,338 (Romanic et al.) for the reasons given below:

Independent Claims 1, 11, and 30 have been amended to recite that the raised print image is formed by using "a transparent or translucent ink having low chroma and low lightness values such that the raised print image is substantially transparent or translucent while causing scattering of the light reflectance and transmittance such that the ink reflects light in at least a partially specular manner, wherein the raised print image is visible at angles within a window of high reflection and substantially non-detectable outside the window" (emphasis added).

In contrast, Romanic et al. discusses a security document having a raised printed image applied to a highly reflective layer in which the printed image is printed using ink having a high chroma value (at least 30 chroma units) and/or high lightness of at least 50 lightness units.

In order to assist the Examiner in understanding the terms "chroma values" and "lightness units," attached is a copy of the CIE  $L^*a^*b^*$  chromaticity colour space model as defined by the Commission Internationale de L'Eclairage in 1976 (Attachment B), which is referred to in the third paragraph in Column 3 of cited U.S. Patent No. 6,605,338.

The CIE  $L^*a^*b^*$  colour space model is a sphere in which lightness ( $L^*$ ) is represented by the vertical axis with  $L=0$  representing pure black at the bottom of the sphere. The top of the sphere represents a bright white colour, which is defined in terms of the colour and brightness of the light source.

The horizontal axes  $a^*$  and  $b^*$  represent increasing colour from the centre of the sphere with  $a^*+$  representing red and  $a^*-$  green,  $b^*+$  representing yellow and  $b^*-$  representing blue. The radial dimensions of the concentric circles in the horizontal plane represent increasing chroma values from 0 at the centre of the sphere to approximately 60 chroma units representing saturated colours at the surface of the sphere. Thus, moving around the surface of the sphere in the horizontal diametrical plane the hue changes from green through blue to red and through yellow

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back to green, with each of the hues being saturated with high chroma values of about 60 chroma units.

It should be appreciated that the centre of the sphere of the CIE L\*a\*b\* chromaticity diagram has neutral colour, i.e., grey for an opaque ink and colourless for a transparent ink. The centre of the CIE L\*a\*b\* sphere lies at approximately 40 units on the vertical lightness scale for opaque inks.

A transparent or translucent ink that is suitable for use in the present invention lies in the region closest to the centre of the sphere having fewer than about 10 chroma units and fewer than about 40 lightness units, but not extending too far in the black direction; otherwise, the ink would be opaque rather than transparent or translucent. When such a transparent or translucent ink having low chroma and low lightness values is printed onto a highly reflective layer to form a raised print image having a height of 10 microns, the applicant has discovered that the raised print image is only visible at angles within a window of high reflection and is substantially non-detectable outside this window owing to scattering of the light reflectance and transmittance caused by the raised print image of transparent or translucent ink. The applicant describes this effect as a "Transparent Intaglio Disappearing Effect (TIDE)". A sample of a security document incorporating this effect was provided to the Examiner as Exhibit 3 of Dr. Bruce Hardwick's declaration filed in connection with this application.

In contrast to the present invention, US 6,605,338 clearly defines a security document having a raised printed image printed using ink of a hue having a chroma value of at least 30 units (i.e., a high chroma value) and/or a lightness of at least 50 lightness units, and preferably from about 70 to about 100 lightness units (high lightness). Referring back to the CIE L\*a\*b\* colour space model, the region defined by Claim 1 of US 6,605,338 is approximately the outer half of the volume of the sphere at the top and sides of the sphere. This region does not encompass the region closest to the centre of the sphere, which is the region that is suitable for use in the present invention. The region immediately under the outer surface of the sphere above the horizontal axis, i.e., high chroma and/or high lightness values, is the most appropriate for U.S. Patent No. 6,605,338 in order to produce the intaglio contrast effect, which is described in that patent. The intaglio contrast effect (ICE) produced in this manner is a raised printed image that is visible at all viewing angles, but which appears much more intense and brighter than the reflective metallic background at oblique viewing angles than when the image is viewed at a substantially perpendicular angle to the surfaces of the substrate. A sample of a document having an intaglio contrast effect in accordance with US 6,605,338 has been previously provided to the Examiner as Exhibit 2 of Dr. Bruce Hardwick's declaration dated 31 October 2003.

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1420 Fifth Avenue  
Suite 2800  
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It should also be appreciated that an ink of a hue having a high chroma value (i.e., at least 30 chroma units) is brightly coloured and opaque, and an ink having a high lightness value (at least 50 lightness units) with a low chroma value is bright white and opaque. Neither of these possibilities covered by U.S. Patent No. 6,605,338 is suitable for producing the Transparent Intaglio Disappearing Effect (TIDE) of the present invention.

In view of the above, it is respectfully submitted that independent Claims 1, 11, and 30, which have been amended to recite that the raised print image is formed by "a transparent or translucent ink having low chroma and low lightness values" are not only novel over US 6,605,338, but also not obvious in view of the teachings of that patent.

In addition to the amendments to independent Claims 1, 11, and 20, new dependent Claims 43 through 45 and a new independent Claim 46 have been added reciting that "the transparent or translucent ink contains less than 2% pigment by weight." These new claims have support in lines 15-16 of page 7 of the application as originally filed. In the case of a coloured pigment, a translucent ink having less than 2% pigment by weight has a chroma value of less than 30 chroma units, and in the case of a white pigment, a translucent ink having less than 2% pigment by weight has a lightness value of significantly less than 50 lightness units.

It is therefore submitted that new dependent Claims 43 through 45 and new independent Claim 46 are patentably distinguishable from U.S. Patent No. 6,605,338, which does not teach or suggest the use of a transparent or translucent ink containing less than 2% pigment by weight to form a raised print image. This is also apparent from the two examples of intaglio ink recited in column 5 of U.S. Patent No. 6,605,338. Each of the examples contain coloured pigment (CIBA yellow or CIBA green) in amounts of 11% by weight and white pigments (calcium carbonate and TiO<sub>2</sub>) in amounts of 34% by weight.

It is further noted that the Office Action did not pay specific attention to the dependent claims, and in particular dependent Claims 2, 12, and 31, which recite that "the ink has a haze value in the range of about 60-98."

"Haze" is defined by the "percent of reflected light scattered by a specimen having a glossy surface so that its direction deviates more than a specified angle from the direction of specular reflection." It is noted that there is no discussion at all of "haze values" in U.S. Patent No. 6,605,338. Further, highly coloured opaque inks, which have chroma values above 30 chroma units and tend toward saturation of about 60 chroma units, and opaque white inks, which have lightness values above 50 lightness units, do not have haze values in the range of about 60-98.

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CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>TM</sup>LLC  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

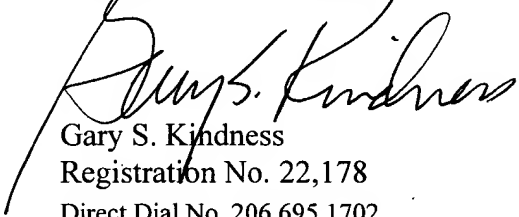
It is important for the transparent or translucent intaglio ink used in preferred embodiments of the present invention to have high haze values in the range of about 60-98 so that the raised print image causes scattering of the light reflectance and transmittance so that the ink reflects light in a partially specular manner in order to produce the transparent intaglio disappearing effect described above. This feature is neither taught nor suggested by U.S. Patent No. 6,605,338.

It is therefore submitted that dependent Claims 2, 12, and 31 and also new independent Claim 64, which define the range of haze values for the transparent or translucent ink, are clearly patentable over U.S. Patent No. 6,605,338 for reasons in addition to the reasons why Claims 1, 11, and 30, the claims for which these claims depend, are patentable.

In view of the foregoing amendments and remarks, applicant submits that all of the amended claims of this application are patentable over U.S. Patent No. 6,605,338. Early and favorable reconsideration of this application, allowance of the claims remaining in this application, and passage of the application to issue are respectfully requested. If the Examiner has any remaining questions, she is invited to contact applicant's attorney at the number set forth below.

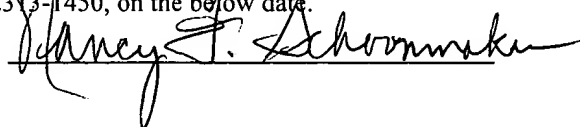
Respectfully submitted,

CHRISTENSEN O'CONNOR  
JOHNSON KINDNESS<sup>PLLC</sup>

  
Gary S. Kindness  
Registration No. 22,178  
Direct Dial No. 206.695.1702

I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the below date.

Date: 8/27/04



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1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
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owned or assigned at the time the invention was made. >If an examiner determines that this situation applies in the reissue application under examination, a consultation with the Office of Patent Legal Administration should be initiated via the Technology Center Special Program Examiner.<

35 U.S.C. 103(c) applies only to prior art usable in an obviousness rejection under 35 U.S.C. 103. Subject matter that qualifies as anticipatory prior art under 35 U.S.C. 102, including 35 U.S.C. 102(e), is not affected, and may still be used to reject claims as being anticipated.

The burden of establishing that subject matter is disqualified as prior art is placed on applicant once the examiner has established a *prima facie* case of obviousness based on the subject matter. >The fact that the reference and the application have the same assignee is not, by itself, sufficient evidence to disqualify the prior art under 35 U.S.C. 103(c). There must be a statement that the common ownership was "at the time the invention was made."<

See MPEP § 706.02(1)(2) for information regarding establishing common ownership. See MPEP § 706.02(1)(3) for examination procedure with respect to 35 U.S.C. 103(c). Non-statutory and statutory double patenting rejections, based on subject matter now disqualified as prior art in amended 35 U.S.C. 103(c), should still be made as appropriate. See MPEP § 804.

### **706.02(1)(2) Establishing Common Ownership [R-2]**

In order to be disqualified as prior art under 35 U.S.C. 103(c), the subject matter which would otherwise be prior art to the claimed invention and the claimed invention must be commonly owned at the time the claimed invention was made >or subject to an obligation of assignment that would establish common ownership<. See MPEP § 706.02(1) for 35 U.S.C. 102(f)/103 or 35 U.S.C. 102(g)/103 prior art disqualified under 35 U.S.C. 103(c). See MPEP § 706.02(1)(1) for 35 U.S.C. 102(e)/103 prior art disqualified under 35 U.S.C. 103(c).

#### **I. DEFINITION OF COMMON OWNERSHIP**

The term "commonly owned" is intended to mean that the subject matter which would otherwise be prior art to the claimed invention and the claimed

invention are entirely or wholly owned by the same person(s) or organization(s)>/business entity(ies)< at the time the claimed invention was made. If the person(s) or organization(s) owned less than 100 percent of the subject matter which would otherwise be prior art to the claimed invention, or less than 100 percent of the claimed invention, then common ownership would not exist. Common ownership requires that the person(s) or organization(s)>/business entity(ies)< own 100 percent of the subject matter and 100 percent of the claimed invention.

Specifically, if an invention claimed in an application is owned by more than one entity and those entities seek to exclude the use of a reference under 35 U.S.C. 103, then the reference must be owned by, or subject to an obligation of assignment to, the same entities that owned the application, at the time the later invention was made. For example, assume Company A owns twenty percent of patent Application X and Company B owns eighty percent of patent Application X at the time the invention of Application X was made. In addition, assume that Companies A and B seek to exclude the use of Reference Z under 35 U.S.C. 103. Reference Z must have been co-owned, or have been under an obligation of assignment to both companies, on the date the invention was made in order for the exclusion to be properly requested. A statement such as "Application X and Patent Z were, at the time the invention of Application X was made, jointly owned by Companies A and B" would be sufficient evidence of common ownership.

For applications owned by a joint venture of two or more entities, both the application and the reference must have been owned by, or subject to an obligation of assignment to, the joint venture at the time the invention was made. For example, if Company A and Company B formed a joint venture, Company C, both Application X and Reference Z must have been owned by, or subject to an obligation of assignment to, Company C at the time the invention was made in order for Reference Z to be properly excluded as prior art under 35 U.S.C. 103(c). If Company A by itself owned Reference Z at the time the invention of Application X was made >and Application X was owned by Company C on the date the invention was made<, >then< a request for the exclusion of Reference Z as prior art under 35 U.S.C. 103(c) would not be proper.

As long as principal ownership rights to either the subject matter or the claimed invention reside in different persons or organizations common ownership does not exist. A license of the claimed invention to another by the owner where basic ownership rights are retained would not defeat ownership.

The requirement for common ownership at the time the claimed invention was made is intended to preclude obtaining ownership of subject matter after the claimed invention was made in order to disqualify that subject matter as prior art against the claimed invention.

The question of whether common ownership exists at the time the claimed invention was made is to be determined on the facts of the particular case in question. Actual ownership of the subject matter and the claimed invention by the same individual(s) or organization(s) or a legal obligation to assign both the subject matter and the claimed invention to the same individual(s) or organization(s) must be in existence at the time the claimed invention was made in order for the subject matter to be disqualified as prior art. A moral or unenforceable obligation would not evidence common ownership.

Under 35 U.S.C. 103(c), an applicant's admission that subject matter was developed prior to applicant's invention would not make the subject matter prior art to applicant if the subject matter qualifies as prior art only under sections 35 U.S.C. 102(f) or 35 U.S.C. 102(g), or, for applications filed on or after November 29, 1999, 35 U.S.C. 102(e), and if the subject matter and the claimed invention were commonly owned at the time the invention was made. See *In re Fout*, 675 F.2d 297, 213 USPQ 532 (CCPA 1982), for a decision involving an applicant's admission which was used as prior art against their application. If the subject matter and invention were not commonly owned, an admission that the subject matter is prior art would be usable under 35 U.S.C. 103.

The burden of establishing that subject matter is disqualified as prior art under 35 U.S.C. 103(c) is intended to be placed and reside upon the person or persons urging that the subject matter is disqualified. For example, a patent applicant urging that subject matter is disqualified as prior art under 35 U.S.C. 103(c), would have the burden of establishing that it was commonly owned at the time the claimed invention was made. The patentee in litigation would like-

wise properly bear the same burden placed upon the applicant before the U.S. Patent and Trademark Office. To place the burden upon the patent examiner or the defendant in litigation would not be appropriate since evidence as to common ownership at the time the claimed invention was made might not be available to the patent examiner or the defendant in litigation, but such evidence, if it exists, should be readily available to the patent applicant or the patentee.

In view of 35 U.S.C. 103(c), the \*>Director< has reinstituted in appropriate circumstances the practice of rejecting claims in commonly owned applications of different inventive entities on the grounds of double patenting. Such rejections can be overcome in appropriate circumstances by the filing of terminal disclaimers. This practice has been judicially authorized. See *In re Bowers*, 359 F.2d 886, 149 USPQ 57 (CCPA 1966). The use of double patenting rejections which then could be overcome by terminal disclaimers preclude patent protection from being improperly extended while still permitting inventors and their assignees to obtain the legitimate benefits from their contributions. See also MPEP § 804.

The following examples are provided for illustration only:

**Example 1**

Parent Company owns 100% of Subsidiaries A and B

- inventions of A and B are commonly owned by the Parent Company.

**Example 2**

Parent Company owns 100% of Subsidiary A and 90% of Subsidiary B

- inventions of A and B are not commonly owned by the Parent Company.

**Example 3**

If same person owns subject matter and invention at time invention was made, license to another may be made without the subject matter becoming prior art.

**Example 4**

Different Government inventors retaining certain rights (e.g. foreign filing rights) in separate inventions owned by Government precludes common ownership of inventions.

**Example 5**

Company A and Company B form joint venture Company C. Employees of A, while working for C with an obligation to assign inventions to C, invent invention #1; employees of B while working for C with an obligation to assign inventions to C, invent invention #2, with knowledge of #1.

Question: Are #1 and #2 commonly owned at the time the later invention was made so as to preclude a rejection under 35 U.S.C. 102(e), (f) or (g) in view of 35 U.S.C. 103?

Answer: Yes- If the required evidence of common ownership is made of record in the patent application file. If invention #1 was invented by employees of Company A **not** working for Company C and Company A maintained sole ownership of invention #1 at the time invention #2 was made, inventions #1 and #2 would not be commonly owned as required by 35 U.S.C. 103(c).

**Example 6**

Company A owns 40% of invention #1 and 60% of invention #2, and Company B owns 60% of invention #1 and 40% of invention #2 at the time invention #2 was made.

-inventions #1 and #2 are commonly owned.

>

**Example 7**

Company B has a joint research project with University A. Under the terms of the joint research project, University A has agreed that all of its patents will be jointly owned by Company B and University A. Professor X, who works for University A, has an employee agreement with University A assigning all his patents only to University A. After the joint research project agreement is executed, University A files patent application #1 for the invention of Professor X, before Company B files patent application #2 on a similar invention.

- inventions #1 and #2 are commonly owned because Professor X's obligation to assign patents to University A who has an obligation to assign patents to the A-B joint venture legally establishes Professor X's obligation to assign patents to the A-B joint venture.

**Example 8**

Inventor X working at Company A invents and files patent application #1 on technology T, owned by Company A. After application #1 is filed, Company A spins off a 100% owned Subsidiary B for technology T including the transfer of the ownership of patent application #1 to Subsidiary B. After Subsidiary B is formed, inventor Y (formerly a Company A employee, but now an employee of Subsidiary B obligated to assign to Subsidiary B) jointly files application #2 with inventor X (now also an employee of Subsidiary B with an obligation to assign to Subsidiary B), which is directed to a possibly unobvious improvement to technology T.

- the inventions of applications #1 and #2 are commonly owned since Subsidiary B is a wholly owned subsidiary of Company A.<

The examiner must examine the application as to all grounds except 35 U.S.C. 102(e), (f) and (g) as they apply through 35 U.S.C. 103 only if the application file(s) establishes common ownership at the time the later invention was made. Thus, it is necessary to look to the time at which common ownership exists. If common ownership does not exist at the time the later invention was made, the earlier invention is not disqualified as potential prior art under 35 U.S.C. 102(e), (f) and (g) as they apply through 35 U.S.C. 103. An invention is "made" when conception is complete as defined in *Mergenthaler v. Scudder*, 11 App. D.C. 264, 81 O.G. 1417, 1897 C.D. 724 (D.C. Cir. 1897); *In re Tansel*, 253 F.2d 241, 117 USPQ 188 (CCPA 1958). See *Pfaff v. Wells Elecs.*, 525 U.S. 55, 119 S. Ct. 304, 312, 48 USPQ2d 1641, 1647 (1998) ("the invention must be ready for patenting . . . by proof that prior to the critical date the inventor had prepared drawing or other descriptions of the invention that were sufficiently specific to enable a person skilled in the art to practice the invention.") Common ownership at the time the invention was made for purposes of obviating a 35 U.S.C. 102(e)/35 U.S.C. 103, 35 U.S.C. 102(f)/35 U.S.C. 103 or 35 U.S.C. 102(g)/35 U.S.C. 103 rejection may be established irrespective of whether the invention was made in the United States or abroad. The provisions of 35 U.S.C. 104, however, will continue to apply to other proceedings in the U.S. Patent and Trademark Office, e.g. in an interference proceeding, with regard to establishing a



date of invention by knowledge or use thereof, or other activity with respect thereto, in a foreign country. The foreign filing date will continue to be used for interference purposes under 35 U.S.C. 119(a)-(d) and 35 U.S.C. 365.

## II. EVIDENCE REQUIRED TO ESTABLISH COMMON OWNERSHIP

It is important to recognize just what constitutes sufficient evidence to establish common ownership at the time the invention was made. The common ownership must be shown to exist at the time the later invention was made. A statement of present common ownership is not sufficient. *In re Onda*, 229 USPQ 235 (Comm'r Pat. 1985).

The following statement is sufficient evidence to establish common ownership of, or an obligation for assignment to, the same person(s) or organizations(s):

Applications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person.

See "Guidelines Setting Forth a Modified Policy Concerning the Evidence of Common Ownership, or an Obligation of Assignment to the Same Person, as Required by 35 U.S.C. 103(c)," 1241 O.G. 96 (December 26, 2000). The applicant(s) or the representative(s) of record have the best knowledge of the ownership of their application(s) and reference(s), and their statement of such is sufficient evidence because of their paramount obligation of candor and good faith to the USPTO.

The statement concerning common ownership should be clear and conspicuous (e.g., on a separate piece of paper or in a separately labeled section) in order to ensure that the examiner quickly notices the statement. Applicants may, but are not required to, submit further evidence, such as assignment records, affidavits or declarations by the common owner, or court decisions, *in addition to* the above-mentioned statement concerning common ownership.

For example, an attorney or agent of record receives an Office action for Application X in which

all the claims are rejected under 35 U.S.C. 103(a) using Patent A in view of Patent B wherein Patent A is only available as prior art under 35 U.S.C. 102(e), (f), and/or (g). In her response to the Office action, the attorney or agent of record for Application X states, in a clear and conspicuous manner, that:

"Application X and Patent A were, at the time the invention of Application X was made, owned by Company Z."

This statement alone is sufficient evidence to disqualify Patent A from being used in a rejection under 35 U.S.C. 103(a) against the claims of Application X.

In rare instances, the examiner may have independent evidence that raises a material doubt as to the accuracy of applicant's representation of either (1) the common ownership of, or (2) the existence of an obligation to commonly assign, the application being examined and the applied U.S. patent or U.S. patent application publication reference. In such cases, the examiner may explain why the accuracy of the representation is doubted, and require objective evidence of common ownership of, or the existence of an obligation to assign, the application being examined and the applied reference as of the date of invention of the application being examined. As mentioned above, applicant(s) may submit, *in addition to* the above-mentioned statement regarding common ownership, the following objective evidence:

(A) Reference to assignments recorded in the U.S. Patent and Trademark Office in accordance with 37 CFR Part 3 which convey the entire rights in the applications to the same person(s) or organization(s);

(B) Copies of unrecorded assignments which convey the entire rights in the applications to the same person(s) or organization(s) are filed in each of the applications;

(C) An affidavit or declaration by the common owner is filed which states that there is common ownership and states facts which explain why the affiant or declarant believes there is common ownership, which affidavit or declaration may be signed by an official of the corporation or organization empowered to act on behalf of the corporation or organization when the common owner is a corporation or other organization; and

(D) Other evidence is submitted which establishes common ownership of the applications.